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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,931	09/15/2006	Erwin Rutschmann	028987.57067US	5770
23122	7590	06/03/2009		
RATNERPRESTIA P.O. BOX 980 VALLEY FORGE, PA 19482			EXAMINER LEE, LESLIE A	
			ART UNIT 3655	PAPER NUMBER
			MAIL DATE 06/03/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/592,931	<b>Applicant(s)</b> RUTSCHMANN ET AL.	
	<b>Examiner</b> LESLIE A. LEE	<b>Art Unit</b> 3655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The amendment filed March 23, 2009 has been entered. Claims 7-9 and 11-13 remain pending in the application. The previous claim objections are withdrawn in light of applicant's amendments.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 7, 8, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0140888 (Tanaka et al.) in view of US 6,823,968 (Baeumler) and US 4,815,419 (Kitada et al.).**

Re claim 7, Tanaka et al. discloses: Internal combustion engine having cylinder groups and using dry-sump-principle pressure lubrication, comprising: a crankcase having an oil suction space (8, fig. 7) in a lower part thereof for collecting lubricant oil; an oil return pump (21 and 22,

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fig. 4) that is configured to convey lubricant oil out of the oil suction space through an oil suction line; an oil supply container (9, fig. 7) that is fluidly coupled to the annular space for receiving defoamed lubricant oil from the annular space; and a main delivery pump (20, fig. 4) configured for conveying lubricant oil from the oil supply container of the lubricant oil, wherein the oil supply container is separate from the oil suction space and is positioned to at least partially surround the oil suction space, at least a portion of the oil supply container being disposed at an elevation beneath the oil suction space (see fig. 7).

Tanaka et al. does not disclose: an annular space arranged around cylinder groups, wherein the oil suction line of the oil return pump delivers lubricant oil into the annular space, and wherein the annular space is fluidly coupled to a vent connection that is exposed to the atmosphere for defoaming the lubricant oil collected within the annular space.

Kitada et al. teaches a cylinder block with an oil jacket (15, fig. 1) surrounding the cylinder liners that is filled with oil from a suction line (18, fig. 1) of a crankcase (25, fig. 1), and is vented by a return pipe (100, fig. 1) that vents oil and air bubbles (column 5, lines 11-17). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the oil jacket of Kitada et al. and vent with the cylinder of Tanaka et al. because Kitada et al. teaches that it employs oil as a cooling fluid for the combustion chamber and discharges air bubbles through the return passage (column 2, lines 49-62).

Baeumler teaches a dry-sump lubrication system for an engine with an air/oil separator (26 and 28, fig. 2). An air/oil separator would inherently contain a vent to the atmosphere to vent the air separated from the oil. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the oil jacket with return pipe of Tanaka et al. as modified by

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Kitada et al. to include the air/oil separator with a vent of Baeumler because this would separate the air and defoam the oil.

Re claim 8, Tanaka et al. does not disclose: the engine is an opposed-cylinder engine.

Baeumler teaches a dry-sump lubrication system for an opposed cylinder engine (column 2, line 14 of Baeumler). This would be an obvious alternative to the in-line cylinder of Tanaka et al.

Re claim 11, Tanaka et al. discloses: the oil supply container (9, fig. 7) is integrated into the crankcase (10, fig. 7).

Re claim 12, Tanaka et al. discloses: oil supply container is integrated into the crankcase so as to be separated from the oil suction space dry sump space by one or more bulkhead walls (8a, 8b, 8c, fig. 7).

**Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0140888 (Tanaka et al.) as modified by US 6,823,968 (Baeumler) and US 4,815,419 (Kitada et al.) as applied to claim 7 above, and further in view of US 5,215,316 (Udagawa).**

Re claim 9, Tanaka et al. as modified by Kitada et al. and Baeumler does not disclose: the annular space is open to a crank space and is gasket-sealed.

Udagawa teaches a gasket (A, fig. 3) that seals an open-deck cylinder block that is open to a crankcase (see fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the gasket of Udagawa with the annular chamber of Tanaka et al. as modified by Baeumler because Udagawa teaches that the gasket securely seals the engine (column 1, lines 63-65).

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Re claim 13, Tanaka et al. as modified by Kitada et al. and Baeumler does not disclose:  
the crankcase is of open deck configuration.

Udagawa teaches an open-deck cylinder block (column 1, lines 63-64). This feature of the gasket sealed cylinder of Udagawa would be included when the cylinder of Udagawa is combined with the engine of Tanaka et al. as modified by Kitada et al, and Baeumler, as discussed above.

### ***Response to Arguments***

Applicant's arguments with respect to claims 7-9 and 11-13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESLIE A. LEE whose telephone number is (571)270-5927. The examiner can normally be reached on Monday - Thursday 9:00 - 6:30, Friday 9:00-5:00, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on (571)272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A. L./  
Examiner, Art Unit 3655

May 22, 2009

/Rodney H. Bonck/  
Primary Examiner, Art Unit 3655